

# **SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT**

---

## **Draft Staff Report**

### **Proposed Amendments to:**

### **Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities**

**June 2007**

#### **Deputy Executive Officer**

Planning, Rule Development and Area Sources  
Elaine Chang, DrPH

#### **Assistant Deputy Executive Officer**

Planning, Rule Development and Area Sources  
Laki Tisopulos, Ph.D., P.E.

#### **Director of Area Sources**

Planning, Rule Development and Area Sources  
Lee Lockie, M.S.

---

#### **AUTHOR:**

Pamela Perryman- Air Quality Specialist

#### **Technical Assistance:**

Sue Lieu – Program Supervisor, Socioeconomic Analysis

James Koizumi - Air Quality Specialist, CEQA Analysis

David Jones – Air Quality Analysis and Compliance Supervisor

Bryan Theis – Senior Deputy District Counsel

Sam Vergara – Supervising AQ Inspector

#### **REVIEWED BY:**

Tracy A. Goss, P.E., Program Supervisor, Particulate Matter Strategies

Lee Lockie, M.S., Director of Area Sources

#### **District Counsel**

William Wong - Senior Deputy District Counsel

**SOUTH COAST AIR QUALITY MANAGEMENT DISTRICT  
GOVERNING BOARD**

Chairman: WILLIAM A. BURKE, Ed.D.  
Speaker of the Assembly Appointee

Vice Chairman: S. ROY WILSON, Ed.D.  
Supervisor, Fourth District  
Riverside County Representative

**MEMBERS:**

MICHAEL D. ANTONOVICH  
Supervisor, Fifth District  
Los Angeles County Representative

BILL CAMPBELL  
Supervisor, Third District  
County of Orange

JANE W. CARNEY  
Senate Rules Committee Appointee

RONALD O. LOVERIDGE  
Mayor, City of Riverside  
Cities Representative, Riverside County

GARY OVITT  
Supervisor, Fourth District  
San Bernardino County Representative

JAN PERRY  
Councilmember, City of Los Angeles  
Cities Representative, Los Angeles County, Western Region

MIGUEL PULIDO  
Mayor, City of Santa Ana  
Cities Representative, Orange County

TONIA REYES URANGA  
Councilmember, City of Long Beach  
Cities Representative, Los Angeles County/Eastern Region

DENNIS YATES  
Mayor, City of Chino  
Cities of San Bernardino County Representative

VACANT  
Governor's Appointee

**EXECUTIVE OFFICER:**  
BARRY R. WALLERSTEIN, D.Env.

## TABLE OF CONTENTS

<b>Executive Summary .....</b>	<b>1</b>
<b>Regulatory Background .....</b>	<b>1</b>
<b>Purpose and Applicability .....</b>	<b>1</b>
<b>Legal Authority .....</b>	<b>2</b>
<b>Affected Industry .....</b>	<b>2</b>
<b>Summary of Proposed Rule Amendments .....</b>	<b>2</b>
<b>Effect on Emissions .....</b>	<b>3</b>
<b>Comparative Analysis .....</b>	<b>4</b>
<b>Draft Findings .....</b>	<b>4</b>
<b>California Environmental Quality Act .....</b>	<b>5</b>
<b>Socioeconomic Assessment .....</b>	<b>5</b>
<b>Response to Comments .....</b>	<b>6</b>

## **EXECUTIVE SUMMARY**

The proposed amendments to Rule (PAR) 1403 – Asbestos Emissions from Demolition/Renovation Activities, are designed to clarify rule intent and ease enforcement of the rule's requirements, and improve overall rule effectiveness. The proposed changes will facilitate compliance for contractors and others who work with asbestos.

Pursuant to the California Environmental Quality Act (CEQA) and AQMD Rule 110, appropriate documentation will be prepared to analyze any potential adverse environmental impacts associated with the proposed amendments to Rule 1403. A socioeconomic impact assessment will be performed for the proposed amendments. The document will be available 30 days prior to the Public Hearing. Staff is seeking comments relative to the staff proposal and these determinations.

## **REGULATORY BACKGROUND**

Rule 1403 – Asbestos Emissions from Demolition/Renovation Activities, was adopted by the AQMD's Governing Board on October 6, 1989, to limit asbestos emissions from building demolition and renovation activities, including the removal and associated disturbance of asbestos-containing materials, as well as the storage and disposal of asbestos-containing waste material (ACWM) generated or handled by these activities. The Environmental Protection Agency (EPA) promulgated emission requirements for asbestos April 5, 1984 (49 FR 13661) as part of the National Emission Standards for Hazardous Air Pollutants (NESHAP) program (40 Code of Federal Regulation (CFR), Part 61, Subpart M) under section 112 of the Clean Air Act (CAA). The SCAQMD has been delegated authority by the EPA to implement Part 61 which is accomplished through the adoption of and periodic amendments to Regulation X – National Emission Standards for Hazardous Air Pollutants. Delegated authorities have the option of adopting and enforcing stricter regulation.

EPA revised the NESHAP for asbestos on November 20, 1990 (55FR 48406). Rule 1403 was amended April 8, 1994 to make it consistent with the revised NESHAP for asbestos, which was adopted by reference into Regulation X on October 4, 1991. The 1994 amendments to Rule 1403 also updated language for consistency with other District rules. Rule 1403 was last amended in November 2006 with administrative changes to add clarifying language and improve enforceability of the rule.

## **PURPOSE AND APPLICABILITY**

The purpose of this rule amendment is to further clarify language and update the rule to assist with implementation of the rule and improve enforceability. Rule 1403 specifies work practice requirements for building demolition and renovation activities in order to reduce emissions of asbestos, a toxic air contaminant.

## **LEGAL AUTHORITY**

The AQMD obtains authority to adopt, amend, or repeal rules and regulations from Health and Safety Code §§39002, 39650 et seq., 39666, 40000, 40001, 40440, 40725 through 40728, 41508, and 41700.

## **AFFECTED INDUSTRY**

The rule covers demolition and renovation activities at certain facilities. The rule does not apply to owner-occupants of residential single-unit dwellings who personally conduct the renovation activity at the dwelling.

## **SUMMARY OF PROPOSED RULE AMENDMENTS**

The proposed amendments to Rule 1403 clarify language to assist operators in complying with the rule requirements. A definition of “Associated Disturbance” is proposed. The phrase appears in the rule’s opening purpose and applicability subdivisions, and in proposed language in the subparagraph (d)(1)(C), titled “Asbestos Removal Schedule”. Clarifying language is proposed for the definition of “Emergency Demolition” to explain who and for what reasons a demolition may be deemed an emergency. The definition of “Facility” is proposed to be changed to clarify that a structure is covered under the rule even after it burns, or is damaged or demolished by an explosion or natural disaster, because asbestos may still be present, and the debris should be handled as any structure previously subject to the rule provisions would be, in the matters pertaining to removal of asbestos containing materials (ACM) and Class II nonfriable ACM. The definition of “Facility Component” is proposed for change to include examples of affected components such as utility/commodity pipelines which are owned or utilized by a facility.

Language is added to subclause (d)(1)(B)(v)(V) to indicate that planned renovations that have been scheduled are to be updated every 3 months. Projects longer than 3 months in duration are difficult to track. The information on nonscheduled activities is submitted annually pursuant to subclause (d)(1)(B)(i)(II). For emergency renovation, a letter from the person impacted by the emergency, such as the property owner or property manager, is required (subclause (d)(1)(B)(iv)(V)). In subclause (d)(1)(B)(vi)(IV), notification updates language has been amended to clarify that all renovation completion date changes must be reported, not just planned renovations. Also, the language clarifies that all renovations/demolitions that are not completed and are abandoned require an update to the notification status.

The proposal updates language to reflect the use of electronic transmissions and web-site submittals for notifications, throughout the rule. Language in clause (d)(1)(C)(i) – Asbestos Removal Schedule, Burning Demolitions, is added to clarify that the only demolitions allowed by burning are those conducted for training purposes and those must also comply with the relevant provisions of Rule 444 – Open Burning.

Language is proposed for addition under the subparagraph (d)(1)(C), “Asbestos Removal Schedule”. This language clarifies that actions resulting in any associated disturbance shall

result in a cessation of operations and prior to continuing, the operator must secure, stabilize and survey the affected areas and submit and obtain approval for a Procedure 5 – Approved Alternative (subclause (d)(1)(C)(ii)(V)).

The provisions covering the removal procedures under subparagraph (d)(1)(D) have been restructured to more clearly define which removal procedure should be used under what circumstances. Procedure 3 – Adequate Wetting, subclause (d)(1)(D)(i)(III)), is only to be conducted with non-power tools used for removing nonfriable asbestos-containing materials. Procedure 5 – Approved Alternative is the method required when ACM has been damaged as from a fire, explosion, or natural disaster (subclause (d)(1)(D)(ii)(I)). Language is also proposed which gives industry more flexibility by the use of a pre-approved Procedure 5 – Approved Alternative, under phrase (d)(1)(D)(i)(V)(2).

Finally, language is proposed for addition under Procedure 5 to clarify that when operating under a Procedure 5, one must comply with all conditions and limitations set forth in the document. This could include demonstrating air, water, and soil clearance levels. For example, schools are required to provide air clearance under Asbestos Hazard Emergency Response Act (AHERA) regulations. Additionally, an air clearance might be required prior to re-occupancy of living or work spaces. Air clearance standards are clearly defined in 40 CFR Chapter I Subchapter R Part 763, Subpart E and are an expected common asbestos industry practice. Both OSHA and sanitation districts have asbestos contaminated water discharge requirements. EPA issued an Applicability Determination Control Number A960013 regarding soil clearance to demonstrate a site has been cleared to “background” levels. The Basin is asbestos free with very few specific sites having naturally occurring asbestos.

Language is proposed for the on-site proof subparagraph (d)(1)(H) to require the retention of copies of notifications and surveys at the job site. Other changes have been proposed for paragraph (j)(8), under exemptions, to correspond to the renumbering in subparagraph (d)(1)(D).

## **EFFECT ON EMISSIONS**

Since the proposed language changes are clarifying in nature and deemed administrative changes, there is no anticipated effect on emissions.

## COMPARATIVE ANALYSIS

Health and Safety Code §40727.2 (g) states that a comparative analysis is not required if the proposed amended rule "...does not impose a new emission limit or standard, make an existing emission limit or standard more stringent, or impose new or more stringent monitoring, reporting, or recordkeeping requirements." Proposed Amended Rule 1403 meets the above conditions.

## DRAFT FINDINGS

Before adopting, amending or repealing a rule, the AQMD shall make findings of necessity, authority, clarity, consistency, non-duplication and reference, as defined in Health and Safety Code § 40727, and determine that there is a problem that the proposed rule will alleviate, as required by Health and Safety Code § 40001(c).

The draft findings are as follows:

**Necessity** - The AQMD Governing Board finds and determines that Proposed Amended Rule 1403 – Asbestos Emission from Demolition/Renovation Activities, is necessary in order to clarify implementation issues and improve rule effectiveness with the current rule.

**Authority** - The AQMD Governing Board obtains its authority to adopt, amend or repeal rules and regulations from Health and Safety Code §§40000, 40440, 40463, and 40725 through 40728.

**Clarity** - The AQMD Governing Board finds and determines that Proposed Amended Rule 1403, as written, takes into consideration public comments from persons affected by the rule, and as a result, can be easily understood by persons directly affected by it.

**Consistency** – The AQMD Governing Board finds and determines that Proposed Amended Rule 1403 is in accordance with, and not in conflict with or contradictory to, existing statutes, court decisions, or federal or state regulations.

**Non-Duplication** – The AQMD Governing Board has determined that Proposed Amended Rule 1403 does not impose the same requirements as any existing state or federal regulation, and the proposed rule is necessary and proper to execute the powers and duties granted to, and imposed on the AQMD.

**Reference** - In adopting these proposed amendments, the AQMD Governing Board references the following statutes which AQMD hereby implements, interprets or makes specific: Health and Safety Code §§ 39002, 39650 et seq., 39666, 40000, 40001, 40440, 40725 through 40728, 41508, and 41700.

## **CALIFORNIA ENVIRONMENTAL QUALITY ACT**

Pursuant to the California Environmental Quality Act (CEQA) and AQMD Rule 110, appropriate documentation will be prepared to analyze any potential adverse environmental impacts associated with the proposed amendments to Rule 1403.

## **SOCIOECONOMIC ASSESSMENT**

A socioeconomic impact assessment will be performed for the proposed amendments. The document will be available 30 days prior to the Public Hearing.



## **RESPONSE TO COMMENTS**

---

The following comments were received during the public workshop held May 16, 2007 and comment period which ended June 6, 2007. CARB submitted a letter stating “no comments” would be made.

1. Comment: The definition “associated disturbance” is too broad with the wording “any disturbance of a matrix.” The phrase “any disruption of the matrix” recreates the problem the rule had prior to the 1994 amendment when the word “broken” was used referring to a nonfriable material identifying that condition as a cause for such material becoming friable. In conjunction with the proposed language in subclause (d)(1)(C)(ii)(V), the interpretation might be all abatement of ACM and all impact to any ACP during renovation would require a Procedure 5. Suggested language to correct this would be in the definition to state an associated disturbance is “any crumbling or pulverizing of ACM or Class II nonfriable, or generation of uncontrolled visible debris from ACM or Class II nonfriable outside a contained environment.” Likewise a change to subclause (d)(1)(C)(ii)(V) should be made to read as follows: “If for any reason, any renovation or demolition results in an associated disturbance of ACM or Class II nonfriable ACM outside of a contained environment, then prior to continuing with any renovation or demolition activity, the owner/operator shall secure, stabilize and survey the affected facility area or areas impacted and submit a Procedure 5 plan and attain approval, prior to any asbestos clean-up.” Worded in this manner the intent is more clearly reflected that ACM will be disturbed during abatement which is a form of renovation but should not in and of itself require a Procedure 5 if conducted correctly.

Response: Staff agrees that the language “any disruption to the matrix” is too broad and has amended the definition which now refers to the crumbling or pulverizing of ACM. Likewise subclause (d)(1)(C)(ii)(V) has been amended to clarify the associated disturbance would be occurring “outside of a containment or work area,” before needing to be addressed by a Procedure 5 plan.

2. Comment: There is a typographical error in subparagraph (d)(B) Notification in the spelling of “demolition” with an extra “s”.

Response: Thank you. The correction has been made.

3. Comment: The language in subclause (d)(1)(B)(ii)(X) presupposes there will be an event of unexpected ACM found on every project, and/or that Class II nonfriable will become crumbled, pulverized, or reduced to powder in the process of renovation. The proposal requires a Procedure 5 plan be prepared and provided in the event something happens and this must be done by a Certified Asbestos Consultant. This is a financial burden for something that might occur. The current language requires a procedure be stated in case there is such an event as additional ACM is found or Class II nonfriable becomes friable. Other sections of the proposal already include changes that would require a Procedure 5 be submitted in the event this condition came to realization on a project. There could be a description of the procedure during the notification process that work will cease and a Procedure 5 plan submitted and approved before work continued in the affected area. Recommended language would include the current rule language with the phrase “including a Procedure 5 work plan” at the end of the sentence.

Response: The language in subclause (d)(1)(B)(ii)(X) has been clarified and the word “procedure” replaced with “steps”. Staff believes this clarification addresses the commentor’s concern.

4. Comment: Subclause (d)(1)(B)(iv)(V) regarding the submittal of a signed letter from the person directly affected by an emergency is too limiting. Not all persons directly affected by an emergency are always available. The language should be expanded to include “their authorized representative.”

Response: Staff disagrees and believes the language as presented and clarified with the examples will enhance enforceability. Modern communication medias make it relatively easy to address emergency needs and thus not create a burden.

5. Comment: The proposed change to subclause (d)(1)(B)(v)(V) to shorten the time for scheduled planned renovation notification is unreasonable. The change is from 1 year to 3 months and the current rule provides for notification if there are changes in the schedule. There are many projects that go on as long as a year. This is only a convenience for AQMD staff. Additionally, if the requirement stays at 3 months, will there be a fee charged each time the “update” is submitted?

Response: The notification requires information as to the amount of asbestos being removed and the removal dates. AQMD staff has a difficult time tracking long-term schedules, progress status, and, thus, the time frame in which the ACM is specifically being removed. This is contrary to the intent of notification. All revisions to notifications require a nominal administrative handling fee of \$43.02. The impacts of these fees will be addressed in the socioeconomic analysis.

6. Comment: Subclause (d)(1)(C)(ii)(II) language is incomplete. It is written such that a building could never be demolished if ACM was damaged during demolition. Add the sentence “Where damage has occurred, comply with subclause (d)(1)(C)(ii)(V).” This requires a Procedure 5 plan in the case of an associated disturbance.

Response: Staff agrees. The language was not clear and thus staff has removed the reference to ACM which is undamaged and in good condition. All ACM must be removed in accordance with the appropriate removal procedure as outlined in subparagraph (d)(1)(D).

7. Comment: The proposed language in subclause (d)(1)(D)(i)(III) is too limiting. Procedure 3 - Adequate Wetting, should allow for all nonfriable material removal where the 3 enumerated steps are followed. The following language is suggested “Procedure 3 shall only be used to remove materials that will not become friable, and while using the following techniques: 1) All exposed nonfriable ACM shall be adequately wet during cutting or dismantling procedures. 2) Nonfriable ACM shall be adequately wet while it is being removed from facility components and prior to its removal from the facility. 3) Drop cloths and tenting shall be used to contain the work area to the extent feasible.

Note: The commentor's suggested language included deleting "non-power tools" language.

Response: Staff agrees the language is too narrow and has clarified that Procedure 3 shall be used to remove nonfriable ACM. Staff disagrees with the suggestion of striking the language limiting activity to non-power tools. The use of power tools can render nonfriable ACM friable.

8. Comment: Phrase (d)(1)(D)(i)(V)(2) contains language regarding air, water and soil clearance testing. There is no air monitoring clearance requirements imposed by code or law except to schools by means of the Asbestos Hazard Emergency Response Act (AHERA) regulation. While this may be a common practice in the industry, it is not consistent. As such, air samples could easily provide a false sense of security to building occupants and owners. Additionally, there is no specified procedure or any requirement for water and soil samples for abatement projects. The NESHAP regulates visible debris. If ACM is not visible, the encapsulation process used on a project will permanently control the fiber matrix to keep it from becoming airborne. AQMD needs to provide justification and scientific evidence and industry standards accepted by the regulating community at large before imposing air, water, and soil samples beyond the AHERA requirements for schools. Will the pre-approved Procedure 5 still require a full fee since the effort involved in approving a Procedure 5 has already been completed when it was approved for multiple use by others? It is recommended that fees required for pre-approved Procedure 5 be based on the quantity of material as required by Procedures 1 through 4.

Response: The specific language regarding "air, water and soil clearance level" has been removed. However, staff has maintained language stating that Procedure 5 plans must comply with all the conditions and limitations set forth therein. This could include demonstrating air, water, and soil clearance levels. For example, schools are required to provide air clearance under AHERA regulations. The information required depends on the specific site conditions and the multi-media asbestos contamination. However, clearances would be consistent with asbestos regulations. Additionally, an air clearance might be required prior to re-occupancy of living or work spaces. Air clearance standards are clearly defined in 40 CFR Chapter I Subchapter R Part 763, Subpart E and are an expected common asbestos industry practice. Both OSHA and sanitation districts have asbestos contaminated water discharge requirements. The State Water Resources Control Board issued a statewide General Permit that applies to all water discharges associated with construction activities. This general permit requires all wastewater generated by an abatement process to be filtered through a 20 and then 5 micron water filter to remove asbestos fibers and that demolition sites be inspected prior to beginning work to ensure that all contaminants have been removed from the site. On October 3, 1994, EPA issued an Applicability Determination Control Number A960013 regarding soil clearance to demonstrate a site has been cleared to "background" levels. The Basin is "asbestos free" as very few specific sites have naturally occurring asbestos.

Also, there is no guarantee that an encapsulation will not breakdown over time and that the encapsulation process used on a project will permanently control the fiber matrix to keep it from becoming airborne.

Finally, the pre-approved Procedure 5 plan has not yet been designed and the fee has not yet been determined, but is not expected to exceed the current Procedure 5 fee established in Rule 301. Staff will consider the commentor suggestion when that determination is made.

9. Comment: The last amendment to Rule 1403 added language in clause (d)(1)(A)(ii) requiring a thorough facility survey identifying all affected materials, including all layers of flooring to the joist level and materials in the wall or ceiling cavities. This is not always possible. For example, a survey done for real estate purposes does not allow one to examine the flooring to the joist.

Response: The purpose of the survey is central to this commentor's question. For demolitions, the survey report should clearly state its purpose and the survey should be comprehensive and encompass the whole building. However, an asbestos survey that is performed in order to comply with Rule 1403 should be contemporary in time with the actual renovation/demolition activity, and should thoroughly survey those materials that will be affected by the activity, including invasive sampling of sub-floors, wall and ceiling materials, etc. as set forth in clause (d)(1)(A)(ii). For renovations surveys, the report should clearly state the purpose and the specific areas and materials that were surveyed.

10. Comment: Why were we, as contractors, denied the ability to hire a Certified Asbestos Contractor (CAC) to prepare a Procedure 5 plan and why is this considered a conflict of interest? Language should be included in the rule under Procedure 5 requirements that allow a contractor to hire a consultant to write a Procedure 5, if the contractor has nothing to do with the CAC and the clearances.

Response: Staff believes the commentor meant Certified Asbestos Consultant (CAC). The law governing this practice is from the Business and Profession Code section 7187 which forbids a CAC or Site Surveillance Technician (SST) hired by a building owner or operator to have any financial or proprietary interest with the asbestos contractor hired for the same project. This is not a rule issue per se and the commentor should contact AQMD enforcement staff directly to discuss the particular situation.

11. Comment: The definition of "Facility" in the proposed amended rule does not match the definition of "Facility" in Rule 1302. Since contiguous properties may affect notification requirements for abatement, this needs to be included in the new Rule 1403.

Response: The definition in Rule 1302 – Definitions, is specific to the New Source Review, Regulation XIII, as denoted by the singular name "Definitions". The definition in Rule 1302 pertains to permitting. Rule 1403 notification requirements are not permits. The definition of "Facility" in Rule 1403 is generally drawn from the NESHAP, 40 CFR Part 61, Subpart M. The NESHAP does not mention contiguous property and Rule 1403

notification requirements likewise do not mention contiguous property. A demolition/renovation project may encompass multiple addresses and notification is for the total amount of asbestos to be removed. If there are multiple structures involved in the project, one form per structure is required and the project receives one tracking number.

12. Comment: Consultants know the AQMD has different rules spread throughout the rule book that apply to asbestos inspection/abatement/demolition. It would be helpful to cite these in 1403, especially for those new to the business.

Response: Due to the dynamic nature of air pollution rules and regulations it is not feasible to put an exhaustive list of applicable rules into Rule 1403, as these rules are occasionally amended and other rules are rescinded or promulgated, including laws that apply to asbestos inspection/abatement/demolition activities enacted by other agencies such as the NESHAP, AHERA, and OSHA rulings. This would be administratively burdensome. Asbestos consultants are state certified and receive pertinent information regarding local requirements along with the ability to be up-to-date with current applicable regulatory requirements. They can be aided by the District's webpage or by contacting District staff directly.